

**OPINION
56-179**

October 16, 1956 (OPINION)

SECURITIES

RE: Registration - Exemption - Motor Carriers

We have before us your request under date of October 10, 1956, regarding motor common carriers to be considered as public service utilities when exemption is claimed from the necessity for registration of securities (stocks and bonds) before same may be offered for sale in North Dakota.

Common motor carriers are defined in section 49-1801, subsections 5, 6, 7, and 8 of the North Dakota Revised Code of 1943, and such common motor carriers are, by statute, public utilities, section 49-0101, paragraph 3 and section 49-0801, paragraph 5 of the North Dakota Revised Code of 1943.

We are, therefore, of the opinion that "other public utilities" referred to in Chapter 106, subsection 4, Laws of 1951, includes common motor carriers and therefore they are exempted securities as referred to in said section. Nothing in such statute or in any law makes its status anything but a public utility.

The next question refers to filing of reports and payment of filing fees. Section 5, subsection 4 of Chapter 106 of the 1951 Session Laws refers to two different methods for permission to sell securities.

The first method provides for securities issued or guaranteed as to principal, interest, or dividends, by a corporation owning or operating a railroad or other public service utility if the corporation is subject to regulation or supervision either as to its rates and charges or as to the issue of its securities by a public service commission.

The second method provides as follows: Provided, however, that a corporation issuing securities, exempted under this subsection, and who have not filed an application for approval of such securities with the public service commission of the State of North Dakota, shall file with the commissioner a copy of the registration statement with all amendments thereto filed with the securities and exchange commission of the United States, if such a registration statement is made or filed, or a copy of the informative statement made to or filed with any commission, board, or body of the United States or of any state, territory, or insular possession thereof, or of any municipality located therein, or of the District of Columbia, or of the Dominion of Canada, or any province thereof, by which said corporation is subject to regulation or supervision either as to its rates and charges or as to the issue of its securities, and shall pay a filing fee of twenty-five dollars.

From this it would follow that if the corporation had made application, a hearing had been held before the commission and

allowed to sell the securities, it would be unnecessary to file any further record as that would appear in the office of the commissioner, and the part of the law referring to what shall be done if the corporation has not filed an application for approval, etc., would in itself mean that there are two provisions whereby the corporation could gain permission to sell securities.

You will notice under the second method it refers to corporations not already having filed the necessary papers, and the filing therefor provided means, as the law states, exemption under this section that those who have not filed an application for approval shall file the records therein stated and shall also pay a \$25.00 fee.

We notice there is no specific provision for the payment of the filing fee of \$25.00 or any other sum under the first method mentioned. But we cannot presume that the Legislature intended to exempt them from the filing fee of \$25.00, where such specific exemption is not mentioned.

It is therefore the opinion of this office that in all cases the common motor carrier must pay the sum of \$25.00 filing fee with the application.

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Attorney General